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ACCESS RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2021-5254
May 5, 2021

On April 28, 2021, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a Grievance Form A from the grievant. Because the grievant was separated during her probationary period, the University of Virginia Medical Center (the “agency”) challenges whether she has access to the grievance procedure.

The General Assembly has recognized that “the maintenance of [the University’s] Medical Center . . . requires specialized management and operation”¹ Further, pursuant to Section 2.2-2905(19) of the Code of Virginia, “[e]mployees of the University of Virginia Medical Center” are exempted from the Virginia Personnel Act but “shall remain subject to the provisions of the State Grievance Procedure” To this end, the University indicates that it has developed a comprehensive human resources program tailored to address its unique needs and the requirements set forth by the General Assembly.

Medical Center Human Resources Policy 205, *Probationary Period*, states that, in general, “[a]ll new Regular Full Time Staff . . . employees of the Medical Center . . . are subject to and will be required to successfully complete a six (6) month probationary period upon initial employment.”² The policy specifies that “[e]ither the probationary employee or the Medical Center may end the employment relationship, at will, at any time during the probationary period.”³ Further, the General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.⁴

The grievant began working for the agency in a full-time position on December 14, 2020, and was terminated from employment on April 27, 2021. As a result, she had not completed her

¹ Va. Code § 23.1-2212(A).

² Medical Center Human Resources Policy 205, *Probationary Period*, at 1.

³ *Id.* at 1.

⁴ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3. The agency’s policy confirms that “[e]mployees in their probationary period do not have access to the State Grievance Procedure.” Medical Center Human Resources Policy 205, *Probationary Period*, at 3.

six-month probationary period with the agency at the time of her separation. Employees who have not completed their probationary period do not have access to the grievance procedure.⁵ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance challenging her termination. Therefore, this dismissal grievance will not proceed to a hearing and EDR will close its file.

This ruling does not address whether some legal or other remedy may be available to the grievant in relation to her claims, but only determines that she is ineligible to pursue these claims through the state grievance procedure. For example, the grievant identifies as one issue in her grievance paperwork an alleged failure to accommodate under applicable law. The grievant may consider filing a complaint about such matters through a different process, such as the federal Equal Employment Opportunity Commission or the Office of Civil Rights within the Virginia Attorney General's Office. Lastly, a copy of this ruling is being provided to the agency's human resources office. The agency is encouraged to review the grievant's submission to ensure that the employment matter has been handled appropriately, if it has not already done so.

EDR's access rulings are final and nonappealable.⁶

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⁵ *E.g.*, EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

⁶ Va. Code § 2.2-1202.1(5).